

DRAFT

DR09-048645; 09-225204 - Maricopa County Sheriff's Office

COUNTY OF MARICOPA, STATE OF ARIZONA

[illegible]

VIOLETION OF DUTIES AND LIABILITIES OF CUSTODIAN OF

-) PUBLIC MONIES, A CLASS 4 FELONY
-) (STEPHEN WETZEL, SANDRA
-) WILSON)
-)
-) **COUNTS 5,6:**
-) TAMPERING WITH A PUBLIC RECORD
-) A CLASS 6 FELONY
-) (STEPHEN WETZEL)
-)
-) **COUNT 7:**
-) CONSPIRACY TO COMMIT HINDERING
-) PROSECUTION OR OBSTRUCTING
-) CRIMINAL INVESTIGATIONS, A CLASS
-) 5 FELONY (GARY DONAHOE, THOMAS
-) IRVINE, DAVID SMITH)
-)
-) **COUNT 8:**
-) OBSTRUCTING CRIMINAL
-) INVESTIGATIONS, A CLASS 5 FELONY
-) (GARY DONAHOE, THOMAS IRVINE,
-) DAVID SMITH)
-)
-) **COUNT 9:**
-) HINDERING PROSECUTION, A CLASS
-) 4 FELONY
-) (GARY DONAHOE, THOMAS IRVINE,
-) DAVID SMITH)
-)
-) **COUNT 10:**
-) BRIBERY OF A PUBLIC SERVANT, A
-) CLASS 4 FELONY
-) (GARY DONAHOE)
-)
-) **COUNT 11:**
-) PARTICIPATING IN A CRIMINAL
-) SYNDICATE, A CLASS 2 FELONY
-) (GARY DONAHOE, THOMAS IRVINE,
-) DAVID SMITH)
-)

The Grand Jurors of Maricopa County, Arizona, accuse STEPHEN WETZEL,
ANDREW KUNASEK, SANDRA WILSON, GARY DONAHOE, THOMAS IRVINE, and

DAVID SMITH, on this 4TH day of January, 2010, charging that in Maricopa County, Arizona:

COUNT 1:

STEPHEN WETZEL and ANDREW KUNASEK, on or between December 2, 2008 and January 29, 2009, knowingly converted for an unauthorized term or use services or property of another entrusted to the defendants or placed in the defendants' possession for a limited, authorized term or use, to wit: within two days of the service of an indictment and grand jury subpoenas on county officers, approved services and payment of public monies to check for and locate listening devices in Maricopa County government offices and, several weeks later, were involved in creating a fraudulent "emergency" memorandum to justify the expenses claiming there was a security breach, then directing a lower-level county employee to use her "P-card" to pay for the expense and not to tell others of the incident, the appropriation of the monies was intended to personally benefit county employees by protecting them from criminal investigations in violation of A.R.S. §§13-1802, 13-1801, 13-701, 13-702, 13-702.01, and 13-801.

COUNT 2:

STEPHEN WETZEL and SANDRA WILSON, on or between February 27, 2009 and March 7, 2009, knowingly converted for an unauthorized term or use services or property of another entrusted to the defendants or placed in the defendants' possession for a limited, authorized term or use, to wit: within a day of the service of a search warrant on Donald Stapley's county office, approved services and payment of public monies to check for and locate listening devices in Maricopa County government offices and, several weeks later, were involved in creating a fraudulent "emergency"

memorandum to justify the expenses claiming there was a security breach, then directing a lower-level employee to use her "P-card" to pay for the expense and not to tell others of the incident, the appropriation of the monies was intended to personally benefit county employees by protecting them from criminal investigations in violation of A.R.S. §§13-1802, 13-1801, 13-701, 13-702, 13-702.01, and 13-801.

COUNT 3:

STEPHEN WETZEL and ANDREW KUNASEK, on or between December 2, 2008 and January 29, 2009, a public officer or other person charged with the receipt, safekeeping, transfer or disbursement of public money, without authority of law, appropriated it to his own use or to the use of another OR altered, falsified, concealed, destroyed or obliterated such an account with an intent to defraud, to wit: within two days of the service of an indictment and grand jury subpoenas on county officers, approved services and payment of public monies to check for and locate listening devices in Maricopa County government offices and, several weeks later, were involved in creating a fraudulent "emergency" memorandum to justify the expenses claiming there was a security breach, then directing a lower-level employee to use her "P-card" to pay for the expense and not to tell others of the incident, the appropriation of the monies was intended to personally benefit county employees by protecting them from criminal investigations in violation of A.R.S. §§35-301, 13-701, 13-702, 13-702.01, and 13-801.

COUNT 4:

STEPHEN WETZEL and SANDRA WILSON, on or between February 27, 2009 and March 7, 2009, a public officer or other person charged with the receipt,

safekeeping, transfer or disbursement of public money, without authority of law, appropriated it to his or her own use or to the use of another OR altered, falsified, concealed, destroyed or obliterated such an account with an intent to defraud or deceive OR knowingly transferred money when not authorized or directed by law, to wit: within a day of the service of a search warrant on Donald Stapley's county office, approved services and payment of public monies to check for and locate listening devices in Maricopa County government offices and several weeks later, were involved in creating a fraudulent "emergency" memorandum to justify the expenses claiming there was a security breach, then directing a lower-level employee to use her "P-card" to pay for the expense and not to tell anyone of the incident, the appropriation of the monies was intended to personally benefit county employees by protecting them from criminal investigations, in violation of A.R.S. §§35-301, 13-701, 13-702, 13-702.01, and 13-801.

COUNT 5:

STEPHEN WETZEL, on or between December 2, 2008 and January 29, 2009, knowingly made or completed a written instrument, knowing that it has been falsely made, which purported to be a public record or true copy thereof or altered or made a false entry in a written instrument which is a public record or a true copy of a public record OR presented or used a written instrument which was or purported to be a public record or a copy of such public record, knowing that it had been falsely made, completed or altered or that a false entry had been made with intent that it be taken as genuine, to wit: created a fraudulent "emergency" procurement letter claiming a security breach in order to justify public monies being used to check for and locate listening

devices to protect county employees from criminal investigations, in violation of A.R.S. §§13-2407, 13-701, 13-702, 13-702.01, and 13-801.

COUNT 6:

STEPHEN WETZEL, on or between February 27, 2009 and March 17, 2009, 2009, knowingly made or completed a written instrument, knowing that it has been falsely made, which purported to be a public record or true copy thereof or altered or made a false entry in a written instrument which is a public record or a true copy of a public record OR presented or used a written instrument which was or purported to be a public record or a copy of such public record, knowing that it had been falsely made, completed or altered or that a false entry had been made with intent that it be taken as genuine, to wit: created a fraudulent "emergency" procurement letter claiming a security breach in order to justify public monies being used to check for and locate listening devices to protect county employees from criminal investigations, in violation of A.R.S. §§13-2407, 13-701, 13-702, 13-702.01, and 13-801.

COUNT 7:

GARY DONAHOE, THOMAS IRVINE and DAVID SMITH, on or between December 2, 2008 and December 15, 2009, with the intent to promote or aid the commission of bribery of a public official, obstruction of criminal investigations or hindering prosecution, agreed with one or more persons that at least one of them or another person will engage in conduct constituting the offense and one of the parties committed an overt act in furtherance of the offense, in violation of A.R.S. §§13-2409, 13-701, 13-702, 13-702.01, and 13-801.

COUNT 8:

GARY DONAHOE, THOMAS IRVINE and DAVID SMITH, on or between December 2, 2008 and December 15, 2009, knowingly by means of bribery, misrepresentation, intimidation, force or threats of force, attempted to obstruct, delay, or prevent the communication of information or testimony relating to a violation of bribery of a public servant, A.R.S. §13-2602, or theft, A.R.S. §13-1802, or fraudulent schemes and artifices, A.R.S. §13-2310, to a peace officer, magistrate, prosecutor or grand jury, to wit: through a series of events, acted to prevent investigation or prosecution of possible criminal charges relating to the construction and funding of the new Maricopa County Criminal Court Tower, actions including but not limited to the following actions by one or more of the defendants: (1) After being so directed by Donald Stapley, a member of the Board of Supervisors which was funding the new Court Tower, Presiding Judge Barbara R. Mundell agreed to hire Thomas Irvine for the Court Tower project in exchange for funding of the new Court Tower; (2) Thomas Irvine subsequently provided legal advice to the Board of Supervisors and the Superior Court intended to unlawfully hinder county prosecutors and law enforcement from investigating and/or prosecuting county officials, and received substantial amounts of public funds for doing little to no legitimate legal work after being so hired; (3) despite a conflict of interest not disclosed to county prosecutors or the public, Gary Donahoe, who serves at the pleasure of Judge Mundell, and Thomas Irvine acted fraudulently and in concert to prevent county prosecutors from investigating these and related acts; (4) David Smith and/or Thomas Irvine, at taxpayer expense, directed county employees not to cooperate in ongoing criminal investigations of senior county officials in order to protect themselves and their

employers from potential prosecution; (5) David Smith and/or Thomas Irvine approved the hiring of Wade Swanson to seek personal sanctions against prosecutors with the County Attorney's Office in a civil matter involving Conley Wolfswinkel in which the Board of Supervisors and Maricopa County were not a party, for the purpose of intimidating county prosecutors, said sanctions later vacated by the Arizona Court of Appeals; (6) Gary Donahoe and Thomas Irvine acted in concert to spoliage ongoing grand jury investigations and otherwise obstruct and prevent prosecution of themselves and other county officials, said actions later rejected by another Superior Court judge; (7) David Smith took other actions at taxpayer expense to hinder investigation and prosecution of his employers and himself, including but not limited to improperly seeking, both personally and through subordinates, to prevent county officials from challenging in court actions by the Board of Supervisors and county management intended to intimidate or thwart law enforcement; (8) Thomas Irvine, who attempted to hire a "bug sweep" contractor at public expense to check for and locate listening devices in the residence of Donald Stapley, and David Smith acted in concert for this corrupt purpose, in violation of A.R.S. §§13-2409, 13-701, 13-702, 13-702.01, and 13-801.

COUNT 9:

GARY DONAHOE, THOMAS IRVINE, and DAVID SMITH, on or between December 1, 2008 and December 15, 2009, with intent to hinder the apprehension, prosecution, conviction or punishment of county officials or contractors for violation of bribery of a public servant, A.R.S. §13-2602, or theft, A.R.S. §13-1802 or fraudulent schemes and artifices, A.R.S. §13-2310, a felony, rendered assistance to county

officials by knowingly preventing or obstructing by means of force, deception or intimidation, a person from performing an act that might aid in the discovery, apprehension, prosecution or conviction of county officials or contractors, to wit: through a series of events described in Count 8 of this indictment, did so act in violation of A.R.S. §§13-2510, 13-701, 13-702, 13-702.01, and 13-801.

COUNT 10:

GARY DONAHOE, on or between December 1, 2008 and December 15, 2009, with corrupt intent, while a public servant, solicited, accepted, or agreed to accept a benefit from County Administration, upon an agreement or understanding that his or her vote, opinion, judgment, exercise of discretion or other action, as a public servant might be influenced to wit: through a series of events described in Count 8 of this indictment, did so act in violation of A.R.S. §§13-2601, 13-701, 13-702, 13-702.01, and 13-801.

COUNT 11:

GARY DONAHOE, THOMAS IRVINE, and DAVID SMITH, on or between December 1, 2009 and December 15, 2009, participated in a criminal syndicate by intentionally promoting or furthering the criminal syndicate by inducing or committing an act or omission by Gary Donahoe, a public servant, in violation of his official duty OR knowingly inciting or inducing others to engage in intimidation to promote or further the criminal objectives of themselves and others, a criminal syndicate, to wit: through a series of events described in Count 8 of this indictment, did so act in violation of A.R.S. §§13-2308, 13-2301, 13-301, 13-701, 13-702, 13-702.01, and 13-801.

DRAFT

("A True Bill")

ANDREW P. THOMAS
MARICOPA COUNTY ATTORNEY

Date: January 4, 2010

/s/ _____
/s/ LISA M. AUBUCHON
DEPUTY COUNTY ATTORNEY

FOREPERSON OF THE GRAND JURY

LMA/OK